

Exhibit A

(CHENG DECLARATION)

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In re:

SEARS HOLDINGS CORPORATION, *et al.*,

Debtors.

Chapter 11

Case No. 18-23538 (RDD)

(Jointly Administered)

**DECLARATION OF MEI CHENG IN SUPPORT OF THE OBJECTION OF URBAN
EDGE PROPERTIES LP TO NOTICE AND SUPPLEMENTAL NOTICE OF CURE
COSTS AND POTENTIAL ASSUMPTION AND ASSIGNMENT OF EXECUTORY
CONTRACTS AND UNEXPIRED LEASES IN CONNECTION
WITH GLOBAL SALE TRANSACTION**

I, Mei Cheng, being duly sworn, depose and say:

1. I am the Manager of Accounts Receivable for certain subsidiaries of Urban Edge Properties LP (“Urban Edge”). Among other responsibilities, I manage the accounts receivable owing to UE Bruckner Plaza LLC (“UE Bruckner”), UE Montehiedra Acquisition LP (“UE Montehiedra”), Urban Edge Caguas LP (“UE Las Catalinas”), and UE 839 New York Avenue LLC (“UE Huntington”) (collectively, the “UE Landlords”).

2. UE Bruckner, as landlord, and Kmart Corporation, as tenant, are parties to that certain lease dated July 2, 1982 (as amended from time to time, the “Bruckner Lease”), covering certain premises commonly known as Bruckner Commons, 1998 Bruckner Blvd., Bronx, NY 10473, which premises the Debtors have designated as Store # 9420. Kmart Corporation became the lessee under the Bruckner Lease by way of that certain Assignment and Assumption Agreement dated March 17, 1999.

3. UE Montehiedra, as landlord, and Kmart Corporation, as tenant, are parties to that certain lease executed by the landlord on April 28, 1997 and by Kmart Corporation on July 8,

1997 (as amended from time to time, the “Montehiedra Lease”), covering certain premises located in The Outlets at Montehiedra (also known as the Montehiedra Town Center) in San Juan, Puerto Rico, which premises the Debtors have designated as Store # 4844.

4. UE Las Catalinas, as landlord, and Kmart Corporation, as tenant, are parties to that certain lease dated October 29, 1998 (as amended from time to time, the “Las Catalinas Lease”), covering certain premises located in the Las Catalinas Shopping Center in Caguas, Puerto Rico, which premises the Debtors have designated as Store # 4858.

5. UE Huntington, as landlord, and Kmart Corporation, as tenant, are parties to that certain First Amended and Restated Lease entered into as of September 9, 1999 but as of September 9, 1998 (as amended from time to time, the “Huntington Lease” and together with the Bruckner Lease, the Montehiedra Lease and the Las Catalinas Lease, the “Leases” and the premises that are subject to such Leases, the “Kmart Premises”), covering certain premises commonly known as Huntington Commons, 839 New York Avenue, Huntington, NY 11743, which premises the Debtors have designated as Store # 9381.

6. Based on my review of relevant documents, and my discussions with personnel and advisors of Urban Edge and the UE Landlords, I am familiar with the premises, the terms of the Leases, and the tenant’s obligations thereunder.

7. Except as otherwise noted, all facts set forth in this declaration (the “Declaration”) are based on my personal knowledge, my discussions with personnel and advisors of Urban Edge and the UE Landlords, my review of relevant documents or my opinion, based upon my experience and knowledge. In making this Declaration, I have relied in part on information and materials that the personnel and/or advisors of Urban Edge and the UE Landlords have gathered, prepared, verified, and provided to me, in each case under my ultimate

supervision, at my direction, and/or for my benefit in preparing this Declaration.

8. I am over the age of 18, competent to testify, and authorized to submit this Declaration on behalf of Urban Edge and the UE Landlords.

9. I submit this Declaration in support of the *Objection of Urban Edge Properties LP to Notice and Supplemental Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Global Sale Transaction* (the “Objection”).¹

10. The Kmart Premises are located in shopping centers. Each of the shopping centers in which the Kmart Premises are located contain a mix of many other retailers—many of which are engaged in the commercial retail distribution of goods—each of which are subject to separate leases with a single landlord (i.e., the applicable UE Landlord). Each of the shopping centers were developed as shopping centers, have common parking areas and have fixed hours during which all or substantially all of the stores are open. Moreover, the Leases at issue here, as well as certain other leases in the shopping centers, contain restrictive use provisions and, except for the Huntington Lease, contain percentage rent provisions. In addition, all tenants in the shopping centers are required, pursuant to their leases, to pay a portion of the costs of trash removal and other maintenance.

11. I have reviewed Exhibit B to the Initial Cure Notice, which identifies (a) the Bruckner Lease with a proposed cure amount of “\$ - ”; and (b) the Montehiedra Lease with a proposed cure amount of \$11,362. *See* Initial Cure Notice, Exhibit B, Line Nos. 265, 343.

12. I have also reviewed Exhibit B-1 to the Supplemental Cure Notice, which identifies (a) the Las Catalinas Lease with a proposed cure amount of “\$ - ”; and (b) the

¹ Capitalized terms used but not defined in this Declaration have the meanings ascribed to them in the Objection.

Huntington Lease with a proposed cure amount of \$116,068.79. *See* Supplemental Cure Notice, Exhibit B-1, Line Nos. 250, 427.

13. The proposed cure amounts set forth in the Cure Notice are incorrect.

i. The Known Obligations

41. The pre-petition and post-petition known and liquidated amounts (the “Known Obligations”) due and owing to each UE Landlord under its Lease, are as follows:

e. Bruckner Lease

42. The Known Obligations due and owing to UE Bruckner under the Bruckner Lease as of the Petition Date is \$315,297.40, which is comprised as follows:

<u>Category of Obligation</u>	<u>Amount Owning</u>
Base Rent	(\$51,178.32)
Common Area Maintenance	\$89,920.45
Real Estate Taxes	\$273,090.27
Pass Through Billing ²	\$3,465.00
Total Pre-Petition Amounts Due	\$315,297.40

43. In addition to the above amounts, real estate taxes and other charges totaling \$719,070.06 has become due after the Petition Date (through the date of the Objection), which is comprised as follows:

<u>Category of Obligation</u>	<u>Amount Owning</u>
Common Area Maintenance (from the Petition Date through January 2019)	\$22,443.43
Real Estate Taxes	\$696,326.63 ³
Pass Through Billing	\$300.00
Total Post-Petition Amounts Due	\$719,070.06

² Pass through billing includes New York City fire prevention fees.

³ Includes real estate taxes (a) in the amount of \$200,713.42 for the period from the Petition Date through December 31, 2018; and (b) real estate taxes in the amount of \$495,613.21 for the period of January 2019 through June 2019.

f. Montehiedra Lease

44. There are no Known Obligations due and owing to UE Montehiedra under the Montehiedra Lease as of the Petition Date. There is an existing pre-petition net credit owing to Kmart Corporation in the amount of \$28,233.82. However, UE Montehiedra is owed \$6,971.44 on account of real estate taxes that have become due after the Petition Date (through the date of the Objection), which amount is comprised as follows:

<u>Category of Obligation</u>	<u>Amount Owing</u>
Common Area Maintenance	(\$334.37)
Real Estate Taxes	\$8,447.50
Other Credits	(\$1,141.69)
Total Post-Petition Amounts Due	\$6,971.44

g. Las Catalinas Lease

45. The total Known Obligations due and owing to UE Las Catalinas under the Las Catalinas Lease as of the Petition Date is \$72,407.49, which is comprised as follows:

<u>Category of Obligation</u>	<u>Amount Owing</u>
Common Area Maintenance	(\$43,377.61)
Real Estate Taxes	\$115,785.10
Total Pre-Petition Amounts Due	\$72,407.49

46. In addition to the above amounts, real estate taxes and common area maintenance charges in the amount of \$122,399.65 have become due after the Petition Date (through the date of this Objection), which is comprised as follows:

<u>Category of Obligation</u>	<u>Amount Owing</u>
Common Area Maintenance (from the Petition Date through January 2019)	\$46,607.90
Real Estate Taxes	\$75,791.75 ⁴
Total Post-Petition Amounts Due	\$122,399.65

⁴ Such real estate taxes are for the period of January 2019 through June 2019.

h. Huntington Lease

47. The total Known Obligations due and owing to UE Huntington under the Huntington Lease as of the Petition Date is \$119,277.99, which is comprised as follows:

<u>Category of Obligation</u>	<u>Amount Owing</u>
Common Area Maintenance	(\$180,917.31)
Real Estate Taxes	\$181,371.30
Capital Expenditure Charges	\$118,823.99
Total Pre-Petition Amounts Due	\$119,277.99

48. In addition to the above amounts, real estate taxes and other charges in the amount of \$272,645.18 have become due after the Petition Date (through the date of this Objection), which is comprised as follows:

<u>Category of Obligation</u>	<u>Amount Owing</u>
Common Area Maintenance (from the Petition Date through January 2019)	(\$21,511.24)
Real Estate Taxes	\$272,095.04 ⁵
Capital Expenditure Charges	\$22,061.39
Total Post-Petition Amounts Due	\$272,645.18

ii. Additional Undetermined Obligations

14. The amounts described above reflect Known Obligations as of the date of the Objection and do not include (a) monetary obligations that have accrued for periods prior to the date of the Objection but are not yet known, determined or billed, including on account of year-end adjustments and reconciliations; (b) post-petition monetary obligations that will accrue and become due after the date of the Objection, including, but not limited to, rent, taxes, and common area maintenance charges; and (c) unknown, contingent or unliquidated monetary obligations and non-monetary obligations under the Leases, including but not limited to

⁵ Includes real estate taxes (a) in the amount of \$48,997.96 for the period from the Petition Date through November 2018; and (b) real estate taxes in the amount of \$223,097.08 (which amount is subject to further review and adjustment) for the period of December 2018 through May 2019.

insurance, contribution and indemnification obligations under the Leases,⁶ that accrued or arose before or after the date of the Objection (such obligations described in (a), (b) and (c) the “Undetermined Obligations”).

15. Although the Buyer has provided Urban Edge certain information regarding its purported ability to perform under the contracts and leases it intends to take an assignment of, such information is inadequate. The Buyer has not provided information from which Urban Edge can reasonably conclude that the Buyer will be able to perform under the Leases.

16. In addition, the Buyer has not provided Urban Edge any information regarding the proposed use of the premises, which is necessary for Urban Edge to determine whether the proposed use is permissible under the Leases and whether such use would disrupt the tenant mix or balance in the shopping center.

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⁶ Debtor Kmart Corporation has various indemnification obligations under the Leases. There are pending litigations against certain of the UE Landlords and there may be other claims that accrued prior to or after the Petition Date that are not known or have not yet been asserted for which Debtor Kmart Corporation is required to indemnify the UE Landlords.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing
statements are true and correct.

Dated: January 31, 2019
New York, New York

By: 

Name: Mei Cheng

Title: Manager – Accounts Receivable of
certain subsidiaries of Urban Edge
Properties LP